DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0316P
Withholding Tax
For the Months of December 2002 and January 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I.   **Tax Administration** – Penalty

   Authority: IC 6-8.1-10-2.1(d);   45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed for the late filing of monthly withholding tax returns for the period December 2002 and January 2003.

The taxpayer is a corporation domiciled in Indiana.

I.   **Tax Adminstration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error is the result of a shortage of personnel.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,
 thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions
provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied

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